

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LYDIA BRYANT,

Plaintiff,

-against-

THE CITY OF NEW YORK; NYPD SGT. DAVID LEONARDI; NYPD P.O. MICHAEL IOVINE; and NYPD P.O. JOHN/JANE DOES 1-10; individual defendants sued in their individual and official capacities,

Defendants.

**ANSWER TO COMPLAINT
ON BEHALF OF
DEFENDANT CITY OF NEW
YORK**

15 CV 4625 (ERK)(RLM)

Jury Trial Demanded

ECF Case

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Defendant City of New York¹, by its attorney, Zachary W. Carter, Corporation Counsel of the City of New York, for its Answer to the Complaint, respectfully alleges, upon information and belief, as follows:

1. Denies the allegations set forth in paragraph "1" of the Complaint, except admits that plaintiff purports to proceed as stated therein.

2. Denies the allegations set forth in paragraph "2" of the Complaint, except admits that the City received a purported notice of claim on or about June 11, 2014.

3. Denies the allegations set forth in paragraph "3" of the Complaint, except admits that no payment or adjustment has been made by defendant City.

4. Denies the allegations set forth in paragraph "4" of the Complaint, except admits that plaintiff purports to invoke the jurisdiction of this Court as stated therein.

¹ Upon information and belief, the individuals identified in the caption as "NYPD Sgt. David Leonardi" and "NYPD P.O. Michael Iovine" have not been served with process and/or have not requested legal representation from the Office of the Corporation Counsel and, therefore, are not yet parties to this action.

5. Denies the allegations set forth in paragraph "5" of the Complaint, except admits that plaintiff purports lay venue as stated therein.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "6" of the Complaint.

7. Denies the allegations set forth in paragraph "7" of the Complaint, except admits that the City of New York is a municipality organized under the laws of the State of New York.

8. Denies the allegations set forth in paragraph "8" of the Complaint, except admits that David Leonardi and Michael Iovinie were employed by the City of New York as members of the New York City Police Department on May 9, 2014.

9. Paragraph "9" of the Complaint contains no averments of fact and, therefore, requires no response.

10. Denies the allegations set forth in paragraph "10" of the Complaint.

11. Denies the allegations set forth in paragraph "11" of the Complaint.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "12" of the Complaint.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "13" of the Complaint.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "14" of the Complaint.

15. Denies the allegations set forth in paragraph "15" of the Complaint, except admits that NYPD officers entered the location.

16. Denies the allegations set forth in paragraph "16" of the Complaint.

17. Denies the allegations set forth in paragraph “17” of the Complaint.
18. Denies the allegations set forth in paragraph “18” of the Complaint, except admits that plaintiff was detained during the execution of the search warrant.
19. Denies the allegations set forth in paragraph “19” of the Complaint, except admits that some of the NYPD officers wore shields and helmets.
20. Denies the allegations set forth in paragraph “20” of the Complaint.
21. Denies the allegations set forth in paragraph “21” of the Complaint.
22. Denies the allegations set forth in paragraph “22” of the Complaint.
23. Denies the allegations set forth in paragraph “23” of the Complaint.
24. Denies the allegations set forth in paragraph “24” of the Complaint.
25. Denies the allegations set forth in paragraph “25” of the Complaint, except admits that plaintiff was transported the 79th Precinct stationhouse.
26. Admits the allegations set forth in paragraph “26” of the Complaint.
27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “27” of the Complaint.
28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “28” of the Complaint.
29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “29” of the Complaint.
30. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “30” of the Complaint.
31. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “31” of the Complaint.

32. Denies the allegations set forth in paragraph “32” of the Complaint.
33. Denies the allegations set forth in paragraph “33” of the Complaint.
34. Denies the allegations set forth in paragraph “34” of the Complaint.
35. Denies the allegations set forth in paragraph “35” of the Complaint.
36. Denies the allegations set forth in paragraph “36” of the Complaint.
37. Denies the allegations set forth in paragraph “37” of the Complaint.
38. Denies the allegations set forth in paragraph “38” of the Complaint.
39. Denies the allegations set forth in paragraph “39” of the Complaint.
40. Denies the allegations set forth in paragraph “40” of the Complaint.
41. Denies the allegations set forth in paragraph “41” of the Complaint.
42. Denies the allegations set forth in paragraph “42” of the Complaint.
43. In response to the allegations set forth in paragraph “43” of the Complaint,

defendant repeats and realleges all of the responses contained within the preceding paragraphs of this answer, as if fully set forth herein.

44. Denies the allegations set forth in paragraph “44” of the Complaint.
45. Denies the allegations set forth in paragraph “45” of the Complaint.
46. In response to the allegations set forth in paragraph “46” of the Complaint,

defendant repeats and realleges all of the responses contained within the preceding paragraphs of this answer, as if fully set forth herein.

47. Denies the allegations set forth in paragraph “47” of the Complaint.
48. Denies the allegations set forth in paragraph “48” of the Complaint.

49. In response to the allegations set forth in paragraph "49" of the Complaint, defendant repeats and realleges all of the responses contained within the preceding paragraphs of this answer, as if fully set forth herein.

50. Denies the allegations set forth in paragraph "50" of the Complaint.

51. Denies the allegations set forth in paragraph "51" of the Complaint.

52. In response to the allegations set forth in paragraph "52" of the Complaint, defendant repeats and realleges all of the responses contained within the preceding paragraphs of this answer, as if fully set forth herein.

53. Denies the allegations set forth in paragraph "53" of the Complaint.

54. Denies the allegations set forth in paragraph "54" of the Complaint.

55. In response to the allegations set forth in paragraph "55" of the Complaint, defendant repeats and realleges all of the responses contained within the preceding paragraphs of this answer, as if fully set forth herein.

56. Denies the allegations set forth in paragraph "56" of the Complaint.

57. Denies the allegations set forth in paragraph "57" of the Complaint.

58. Denies the allegations set forth in paragraph "58" of the Complaint.

59. Denies the allegations set forth in paragraph "59" of the Complaint.

60. In response to the allegations set forth in paragraph "60" of the Complaint, defendant repeats and realleges all of the responses contained within the preceding paragraphs of this answer, as if fully set forth herein.

61. Denies the allegations set forth in paragraph "61" of the Complaint.

62. Denies the allegations set forth in paragraph "62" of the Complaint.

63. In response to the allegations set forth in paragraph "63" of the Complaint, defendant repeats and realleges all of the responses contained within the preceding paragraphs of this answer, as if fully set forth herein.

64. Denies the allegations set forth in paragraph "64" of the Complaint.

65. Denies the allegations set forth in paragraph "65" of the Complaint.

66. In response to the allegations set forth in paragraph "66" of the Complaint, defendant repeats and realleges all of the responses contained within the preceding paragraphs of this answer, as if fully set forth herein.

67. Denies the allegations set forth in paragraph "67" of the Complaint.

68. In response to the allegations set forth in paragraph "68" of the Complaint, defendant repeats and realleges all of the responses contained within the preceding paragraphs of this answer, as if fully set forth herein.

69. Denies the allegations set forth in paragraph "69" of the Complaint.

70. Denies the allegations set forth in paragraph "70" of the Complaint.

71. Denies the allegations set forth in paragraph "71" of the Complaint.

72. In response to the allegations set forth in paragraph "72" of the Complaint, defendant repeats and realleges all of the responses contained within the preceding paragraphs of this answer, as if fully set forth herein.

73. Denies the allegations set forth in paragraph "73" of the Complaint.

74. In response to the allegations set forth in paragraph "74" of the Complaint, defendant repeats and realleges all of the responses contained within the preceding paragraphs of this answer, as if fully set forth herein.

75. Denies the allegations set forth in paragraph "75" of the Complaint.

76. Denies the allegations set forth in paragraph "76" of the Complaint.
77. In response to the allegations set forth in paragraph "77" of the Complaint, defendant repeats and realleges all of the responses contained within the preceding paragraphs of this answer, as if fully set forth herein.

78. Denies the allegations set forth in paragraph "78" of the Complaint.
79. Denies the allegations set forth in paragraph "79" of the Complaint, including its subparts.

80. Denies the allegations set forth in paragraph "80" of the Complaint.
81. Denies the allegations set forth in paragraph "81" of the Complaint.
82. Denies the allegations set forth in paragraph "82" of the Complaint.
83. Denies the allegations set forth in paragraph "83" of the Complaint.
84. Denies the allegations set forth in paragraph "84" of the Complaint and respectfully refer the Court to the dockets of the criminal proceedings described for a full and accurate recitation of the those matters.

85. Denies the allegations set forth in paragraph "85" of the Complaint.
86. Denies the allegations set forth in paragraph "86" of the Complaint.
87. Denies the allegations set forth in paragraph "87" of the Complaint.
88. In response to the allegations set forth in paragraph "88" of the Complaint, defendant repeats and realleges all of the responses contained within the preceding paragraphs of this answer, as if fully set forth herein.

89. Denies the allegations set forth in paragraph "89" of the Complaint.
90. Denies the allegations set forth in paragraph "90" of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

91. The Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

92. Defendant has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

93. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct or the intervening culpable and/or negligent conduct of others and was not the proximate result of any act of the defendant.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

94. Plaintiff's claims may be barred, in whole or in part, because plaintiff may have failed to comply with all conditions precedent to suit under state law.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

95. There was probable cause for plaintiff's arrest, detention and/or prosecution.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

96. There was reasonable suspicion for any stop or search of the plaintiff.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

97. Plaintiff provoked the incident.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

98. Plaintiff failed to mitigate damages.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

99. At all times relevant to the acts alleged in the Complaint, the duties and functions of the municipal defendant's officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendant City has governmental immunity from liability.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

100. Plaintiff cannot obtain punitive damages as against the City of New York.

WHEREFORE, defendant City of New York requests judgment dismissing the Complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
January 5, 2016

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